



December 27, 2001

Ms. Sylvia F. Hardman
Deputy Commissioner
Legal Services
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR2001-6103

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156580.

The Texas Rehabilitation Commission (the "TRC") received four written requests for information from two current TRC employees. The first employee requested "a copy of matrix, questions, expected answers, answers given by the hired CAS for the position, & my answers" for two separate TRC job postings. The second employee asked for "matrix rpt, questions & expected responses" for the same two job postings. You state that the TRC has provided to the first requestor the matrices, the answers given by the selected CAS candidate, and the first requestor's answers and has provided the matrices to the second requestor. You claim that the remaining requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied

section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

After reviewing the submitted information, we agree that some of the interview questions constitute "test items" as contemplated by section 552.122(b). Accordingly, the TRC may withhold the questions and answers which we have marked. We note that question 12 of "Unit 14" was missing from the submitted information. If there was a question 12 which was used in the interview process, it, as well as its preferred answers, must now be released to the requestors.

You ask whether the TRC is required to request an open records ruling each time it receives a request for job interview questions and answers. Section 552.301 provides in part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C *must ask for a decision* from the attorney general about whether the information is within that exception *if there has not been a previous determination* about whether the information falls within one of the exceptions.

Gov't. Code § 552.301 (emphasis added). There are only two instances in which a previous determination exists. Open Records Decision No. 673 at 6 (2001). The first is where, assuming the law, the facts, and the circumstances in which the ruling was based have not changed, the information at issue is precisely the same information as was addressed in the prior attorney general ruling, the ruling is addressed to the same governmental body, and the ruling concludes that the information is or is not subject to disclosure. *Id.* The second is where the information at issue falls within a specific, clearly delineated category of information. *Id.* at 7. In order for a category of information to be granted a previous determination there are five criteria which must be met¹. As noted above, whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). For this reason, we decline to issue a

¹The five criteria for this type of "previous determination" are 1) the requested records or information at issue fall within a specific, clearly delineated category of information about which this office has previously rendered a decision; 2) the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested; 3) the previous decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Act; 4) the elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records or information at issue is or is not excepted from required disclosure; and 5) the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office. *See* Open Records Decision No. 673 (2001).

previous determination that would grant the TRC the authority to withhold categorically all interview questions and answers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

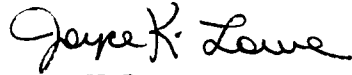
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/seg

Ref: ID# 156580

Enc: Submitted documents

c: Ms. Helen Taylor
16825 Tortoise Street
Round Rock, Texas 78664
(w/o enclosures)

Ms. Danielle Williams
1104 Acanthus Street
Pflugerville, Texas 78660
(w/o enclosures)